Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Filling Vacancies
Date: August 11, 2007

Per Subcommittee request, the staff has improved the straw language offered to alter the vacancy provisions of the Charter:

Current Charter as Marked Up to Improve Vacancy Process

SECTION 12.THE COUNCIL.
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(h) If a vacancy occurs for any reason in the office of a Council District, the procedures set forth in Charter section 12(h) shall be followed:

(1) If the vacancy occurs for any reason other than a successful recall election, and,

(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,

(B) If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ~~ninety (90)~~**180** days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(i) If one candidate receives the majority of the votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ~~forty-nine (49)~~**60** days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of Charter section 12(h), a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(i). If a vacancy

occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk; **provided, however, unless the resignation has been made for cause, such as a court finding of criminality on the part of the person resigning, that person may hold office until a successor is appointed or elected**.

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(I) In the event that the Council must act to fill a vacancy in the office of Mayor or City Attorney, existing by reason of resignation of either officer, the following procedure shall be followed. If the officer has resigned for cause, such as a court finding of criminality, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk. If the resignation is not for cause, the Council may permit him or her to serve until a successor has been elected. If the officer does not wish to serve until a successor is elected, then the Council shall either fill the vacancy by appointment or cause an election to be held to fill the vacancy. Any person appointed or elected to fill such vacancy shall serve for the remainder of such unexpired term.

SECTION 24. MAYOR.

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In the event of a vacancy occurring in the office of the Mayor, existing by reason of any cause **other than resignation**, the Council shall have authority to fill such vacancy, provided, however, that if the Council shall fail to fill such vacancy by appointment within thirty (30) days after the vacancy, the Council must immediately cause an election to be held to fill such vacancy. Any person appointed to fill such vacancy, shall hold office only until the next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term."

SECTION 40. CITY ATTORNEY.

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In the event of a vacancy occurring in the office of the City Attorney by reason of any cause **other than resignation**, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified."

Staff Analysis

The above language creates more realistic timelines to be followed in the event of a vacancy in office. At the same time, it hews closely to the language of the present Charter in the event such vacancies arise. If the above language were adopted, then the City of San Diego would be able to employ a more uniform procedure to handle vacancies. The language also addresses two problems raised by Council resident Scott Peters at a previous Subcommittee meeting. First of all, an incumbent who resigns could hold office until the successor replaces him or her, unless criminality had forced the resignation. Secondly, this language should allow greater leeway, so that elections do not have to be called at a particularly inauspicious time, such as when people are involved in their holiday observances.